

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

**TYREE GOINS
ADC #156468**

PLAINTIFF

v. **Case No. 2:20-cv-00195-KGB-ERE**

GREGORY RECHCIGL, et al.

DEFENDANTS

ORDER

Before the Court is a Recommended Disposition submitted by United States Magistrate Judge Edie R. Ervin (Dkt. No. 38). Defendants Gregory Rechigl, Terri Moody, and Tracy Bennett filed objections (Dkt. No. 40). After careful consideration of the Recommended Disposition, the objections, and a *de novo* review of the record, the Court adopts the Recommended Disposition in part and in its conclusion (Dkt. No. 38).

The Court writes separately to address defendants' objections (Dkt. No. 40). In their objections, defendants adopt and incorporate by reference their response to plaintiff Tyree Goins's motion to dismiss or extend time (*Id.*, ¶ 1 (citing (Dkt. No. 37))). In her Recommended Disposition, Judge Ervin acknowledged defendants' opposition and "considered all of the factors referenced" by defendants in their response (Dkt. No. 38, at 3) (citing *Witzman v. Gross*, 148 F.3d 988, 992 (8th Cir. 1995)). The Court notes defendants' objections to Judge Ervin's finding that the discovery deadline had passed before Mr. Goins was able to secure counsel (Dkt. Nos. 38, at 2; 40, ¶ 8). Defendants are correct that Mr. Goins secured counsel before the discovery deadline passed (Dkt. Nos. 31; 32). However, this fact does not change the disposition of Mr. Goins's motion for Rule 41(a) dismissal without prejudice (Dkt. No. 36). The Court agrees with the remainder of Judge Ervin's findings and analysis and has adopted them as the Court's own; the Court will not repeat the facts and analysis with respect to defendants' objections. To the extent defendants assert that

Judge Ervin's observation that Mr. Goins prosecuted this action for almost two years without the assistance of counsel constituted the addition of an improper "new factor" (Dkt. No. 39, ¶ 4), the Court overrules defendants' contention on this point.

The Court adopts the Recommended Disposition as modified (Dkt. No. 38). Based on the Court's review and adopting of the Recommended Disposition: (1) the Court grants Mr. Goins's motion for Rule 41(a) dismissal without prejudice (Dkt. No. 36); (2) the Court dismisses without prejudice Mr. Goins's remaining claims; and (3) the Court denies as moot defendants' motion for summary judgment (Dkt. No. 33). If Mr. Goins refiles in federal court and if the Court determines that the payment of costs and fees in an amount to be determined is required, then Mr. Goins shall be required to pay the costs and fees in the designated amount before the second action is permitted to proceed. *See Fed. R. Civ. P. 41(d); Kern v. TXO Production Corp.*, 738 F.2d 968, 970 (8th Cir. 1984). If Mr. Goins refiles in state court, defendants may apply for this Court to enter judgment against Mr. Goins for an appropriate amount of costs and fees. *Kern*, 738 F.2d at 972. The Clerk of Court is directed to close this case.

It is so ordered this 13th day of September, 2023.



Kristine G. Baker
United States District Judge